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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-468

11 **ROBERT CHARLES WESTERFIELD**
12 **144 Old Creek Drive**
13 **Monument, CO 80132**
14 **Registered Nurse License No. 524460**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

15 **FINDINGS OF FACT**

16 1. On or about February 22, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
17 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
18 of Consumer Affairs, filed Accusation No. 2012-468 against Robert Charles Westerfield
19 ("Respondent") before the Board of Registered Nursing.

20 2. On or about July 29, 1996, the Board of Registered Nursing ("Board") issued
21 Registered Nurse License No. 524460 to Respondent. The Registered Nurse License expired on
22 September 30, 2005, and has not been renewed.

23 3. On or about February 22, 2012, Respondent was served by Certified and First Class
24 Mail copies of the Accusation No. 2012-468, Statement to Respondent, Notice of Defense,
25 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
26 and 11507.7) at Respondent's address of record which, pursuant to California Code of
27

1 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.

2 Respondent's address on record with the Board was and is:

3 **144 Old Creek Drive**
4 **Monument, CO 80132.**

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about March 8, 2012, the Board received the domestic return receipt indicating
9 that the aforementioned documents served via Certified Mail were delivered. The aforementioned
10 documents served via First Class Mail were not returned by the U.S. Postal Service as
11 undeliverable.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 2012-468.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 2012-468, finds

1 that the charges and allegations in Accusation No. 2012-468, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$527.50 as of March 7, 2012.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Robert Charles Westerfield has
8 subjected his Registered Nurse License No. 524460 to discipline.

9 2. Pursuant to Business and Professions Code section 118, 2764, and 2811, subdivision
10 (b), in conjunction with California Code of Regulations title 16, section 1419.3, the Board has
11 jurisdiction to adjudicate this case by default.

12 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
13 Nurse License based upon the following violations alleged in the Accusation which are supported
14 by the evidence contained in the Default Decision Evidence Packet in this case.:

15 a. **Disciplinary Action by the State of Colorado Board of Nursing.** Respondent
16 is subject to disciplinary action under Code section 2761, subdivision (a)(4), on the grounds of
17 unprofessional conduct in that Respondent's professional nurse license was disciplined by the
18 State of Colorado Board of Nursing ("Colorado Board"). On or about May 8, 2008, pursuant to
19 the Stipulation and Final Agency Order issued by the Colorado Board, in the disciplinary action
20 entitled *In the Matter Disciplinary Proceedings Regarding the License to Practice Professional*
21 *Nursing in the state of Colorado of Robert Charles Westerfield, RN, License Number 160590*, the
22 Colorado Board accepted the voluntary relinquishment of Respondent's professional nursing
23 license. The basis for the discipline is as follows:

- 24 i. Between June 2006 and September 2006, Respondent was employed as a
25 professional nurse at Penrose Community Hospital, Colorado Springs,
26 Colorado.
- 27 ii. While employed at the Penrose Community Hospital, Respondent diverted
28 opiates several times, including morphine and hydromorphone for

1 injection.

- 2 iii. While employed at the Penrose Community Hospital, numerous medication
3 discrepancies were discovered in Respondent's patient charts including
4 documentation of morphine and hydromorphone administration without a
5 physician order, failure to waste unused narcotics, and a pattern of
6 removing additional doses of morphine and hydromorphone without an
7 indication of need.
- 8 iv. On or about September 19, 2006, Respondent voluntarily admitted himself
9 to an inpatient drug and rehab center.
- 10 v. On or about November 22, 2006, Respondent was accepted into the
11 Colorado Board's Impaired Professional Diversion Program, also known as
12 the Colorado Nurse Health Program ("CNHP").
- 13 vi. While enrolled in CNHP, Respondent had instances of non-compliance,
14 including submitting an un-testable urine sample for drug screening,
15 missing a Breathalyzer and urine test, and abandoning the CNHP contract.
16 Respondent notified CNHP that he wished to withdraw from the program.

17 b. **Unprofessional Conduct.** Respondent is subject to disciplinary action
18 under Code section 2761, subdivision (a), in that Respondent committed acts of unprofessional
19 conduct. The conduct is more particularly described in paragraphs 3, subparagraphs (a)(i-vi),
20 inclusive, above, and herein incorporated by reference.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 524460, heretofore issued to Respondent Robert Charles Westerfield, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 17, 2012.

It is so ORDERED July 20, 2012



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Accusation Case No. 2012-468

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2012-468**

11 **ROBERT CHARLES WESTERFIELD**
12 **144 Old Creek Drive**
Monument, CO 80132
13 **Registered Nurse License No. 524460**

A C C U S A T I O N

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

- 18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing.
20 2. On or about July 29, 1996, the Board of Registered Nursing issued Registered Nurse
21 License Number 524460 to Robert Charles Westerfield ("Respondent"). The Registered Nurse
22 License expired on September 30, 2005, and has not been renewed.

23 **JURISDICTION**

- 24 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
25 Department of Consumer Affairs, under the authority of the following laws. All section
26 references are to the Business and Professions Code ("Code") unless otherwise indicated.
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4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

5. Section 118, subdivision (b) of the Code provides, in pertinent part:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

7. Section 2761 of the Code provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action ...”

8. Section 2811, subdivision (b) of the Code provides:

“Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant

1 pass such examination as it deems necessary to determine his present fitness to
2 resume the practice of professional nursing.”

3 **COST RECOVERY**

4 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Disciplinary Action by the State of Colorado Board of Nursing)**

10 10. Respondent is subject to disciplinary action under Code section 2761, subdivision
11 (a)(4), on the grounds of unprofessional conduct in that Respondent’s professional nurse license
12 was disciplined by the State of Colorado Board of Nursing (“Colorado Board”).

13 11. On or about May 8, 2008, pursuant to the Stipulation and Final Agency Order
14 issued by the Colorado Board, in the disciplinary action entitled *In the Matter Disciplinary*
15 *Proceedings Regarding the License to Practice Professional Nursing in the state of Colorado of*
16 *Robert Charles Westerfield, RN, License Number 160590*, the Colorado Board accepted the
17 voluntary relinquishment of Respondent’s professional nursing license. The basis for the
18 discipline is as follows:

19 a. Between June 2006 and September 2006, Respondent was employed as a
20 professional nurse at Penrose Community Hospital, Colorado Springs, Colorado.

21 b. While employed at the Penrose Community Hospital, Respondent diverted
22 opiates several times, including morphine and hydromorphone for injection.

23 c. While employed at the Penrose Community Hospital, numerous medication
24 discrepancies were discovered in Respondent’s patient charts including documentation of
25 morphine and hydromorphone administration without a physician order, failure to waste unused
26 narcotics, and a pattern of removing additional doses of morphine and hydromorphone without an
27 indication of need.

28 d. On or about September 19, 2006, Respondent voluntarily admitted himself

1 to an inpatient drug and rehab center.

2 e. On or about November 22, 2006, Respondent was accepted into the
3 Colorado Board's Impaired Professional Diversion Program, also known as the Colorado Nurse
4 Health Program ("CNHP").

5 f. While enrolled in CNHP, Respondent had instances of non-compliance,
6 including submitting an un-testable urine sample for drug screening, missing a Breathalyzer and
7 urine test, and abandoning the CNHP contract. Respondent notified CNHP that he wished to
8 withdraw from the program.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 12. Respondent is subject to disciplinary action under Code section 2761, subdivision
12 (a), in that Respondent committed acts of unprofessional conduct. The conduct is more
13 particularly described in paragraphs 10 and 11, subparagraphs (a) through (f), inclusive, above,
14 and herein incorporated by reference.

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1 P R A Y E R

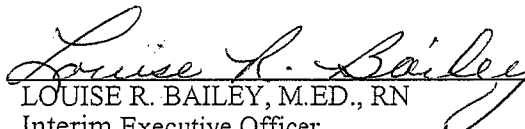
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 524460, issued to Robert
5 Charles Westerfield;

6 2. Ordering Robert Charles Westerfield to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: February 22, 2012

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14 LOUISE R. BAILEY, M.ED., RN
15 Interim Executive Officer
16 Board of Registered Nursing
17 State of California
18 Complainant

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